MAY 1975

POLICE OFFICER'S HANDBOOK

THE CRIMINAL LAW

PART XII

NEW (SC) LEGISLATION - 1975

SEARCH WARRANTS - COPIES

ARREST WARRANTS - COPIES

SAWED-OFF SHOTGUNS & RIFLES

PREVIOUSLY UNKNOWN INFORMERS' INFORMATION
(US v. Smith)

FLEMING'S NOTEBOOK...Chapter 112:

Court Orders Granting New Trial -

Right of Arresting Officer to Notice
(Ishmell v. SCHD)

Prepared under the direction of E. Fleming Mason Producer of Crime-to-Court ETV Law Enforcement Informational Programs, in cooperation with South Carolina Educational Television Network with funds Provided through the South Carolina Criminal Justice Academy.

LAW ENFORCEMENT - ETV TRAINING PROGRAM

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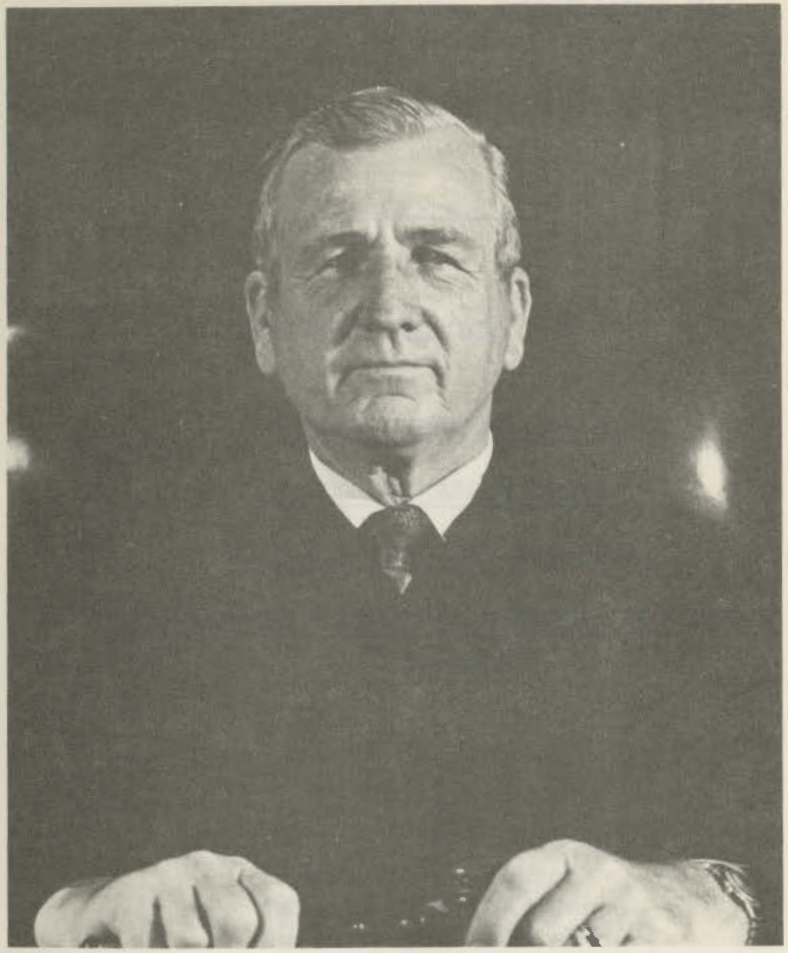


Hon. L.L. Lesesne
County Judge - Civil Court
Williamsburg County S.C.

"An informer's reliability can be verified on grounds other than past reliability; the reasonableness of his access to accurate knowledge concerning the suspect, independant corroboration of the informer's information, and independent investigation."

L.L. Lesesne
County Judge - Civil Court
Williamsburg County S.C.

CONTENTS

(SC) 1975 LEGISLATION

SEARCH WARRANTS

The General Assembly of South Carolina has enacted legislation requiring that when a search warrant is executed, a copy of the warrant (including the affidavit) shall be left with the person against whom it is executed.

ACT 67 OF 1975

"When any person is served with a search warrant, such person shall be furnished with a copy of the warrant along with the affidavit upon which warrant was issued."

Act 67 amends Act 763 of 1964, which was earlier amended by Act 202 of 1969. The 1975 amendment causes the search warrant law to read:

ACT 763 OF 1964 AS AMENDED

"Section 1. Any magistrate or recorder or city judge having the powers of magistrates, or any judge of any court of record of the State having jurisdiction over the area where the property sought is located, may issue a search warrant to search for and seize (1) stolen or embezzled property; (2) property, the possession of which is unlawful; (3) property which is being used or has been used in the commission of a criminal offense or is possessed with the intent to be used as the means for committing a criminal offense or is concealed to prevent a criminal offense from being discovered; (4) property constituting evidence of crime or tending to show that a particular person committed a criminal offense; (5) any narcotic drugs, barbiturates, amphetamines or other drugs restricted to sale, possession, or use on prescription only, which are manufactured, possessed, controlled, sold, prescribed, administered, dispensed or compounded in

violation of any of the laws of this State or of the United States. Narcotics, barbiturates or other drugs seized hereunder shall be disposed of as provided by Section 32-1492.

The property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control.

A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant. If the magistrate, municipal judge, or other judicial officer abovementioned is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and

naming or describing the person or place to be searched. In the case of a warrant issued by a magistrate or a judge of a court of record, it shall be directed to any peace officer having jurisdiction in the county where issued, including members of the South Carolina Law Enforcement Division, and shall be returnable to the issuing magistrate. In case of a warrant issued by a judge of a court of record, it shall be returnable to a magistrate having jurisdiction of the area where the property is located or the person to be searched is found. If any warrant is issued by any municipal judicial officer to municipal police officers, the return shall be made to the issuing municipal judicial officer. Any warrant issued shall command the officer to whom it is directed to forthwith search the person or place named for the property specified.

Any warrant issued hereunder shall be executed and return made only within ten days after it is dated. The officer executing the warrant shall make

and deliver a signed inventory of any articles seized by virtue of the warrant, which shall be delivered to the judicial officer to whom the return is to be made, and if a copy of the inventory is demanded by the person from whose person or premises the property is taken, a copy of the inventory shall be delivered to him.

This section is not intended to and does not either modify or limit any statute or other law regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made."

"Section 1A. When any person is served with a search warrant, such person shall be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued."

DEPARTMENT RECORDS

For records purposes, the simplest and most effective means of preserving a record of service of a copy of a search warrant would be to have a stamp to impress a certificate on the original search warrant:

CERTIFICATE

I,_____, certify that the within search warrant was executed on the____day of____, 19____, and that an exact copy, including the affidavit, was left by me with_____, who was apparently in charge of the subject premises; or such copy was left attached to the premises as follows:_____, there appearing no person who was apparently in charge of the subject premises.

_____
Officer

WHAT IS RESULT OF FAILURE TO LEAVE COPY OF SEARCH WARRANT?

It cannot be predicted with any degree of accuracy what the courts will do with respect to what will be done when the required copy is not left as directed by law. The two most likely things are these:

1. Evidence seized as a result of the search will be excluded as evidence at trial. Exclusionary rule.

2. The failure to leave a copy will not affect the prosecution unless the defendant can show that he was prejudiced by such failure.

In any event, it is safer to comply with the law as written.

ARREST WARRANTS

ACT 90 OF 1975

"When any person is arrested in any criminal matter pursuant to an arrest warrant, the person so arrested shall be furnished with a copy of such warrant and the affidavit upon which the warrant was issued."

A stamp similar to the one suggested for search warrants will create a permanent record on the original arrest warrant:

CERTIFICATE

I,_____certify that the within arrest warrant was executed by me on the____day of____, 19____, and that I left a copy of such warrant, including the affidavit, with the defendant(s) by handing such copy or copies to the defendant(s) personally.

_____
Officer

Sections 43-111 and 43-111.1, 1962 Code of Laws of South Carolina, as amended, relating to arrest warrants, now read:

PROCEDURE IN CRIMINAL CASES

§43-111. PROCEEDINGS TO BE BY INFORMATION. All proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue.

"Section 43-111.1. When any person is arrested in a criminal matter pursuant to an arrest warrant, the person so arrested shall be furnished with a copy of such warrant and the affidavit upon which the warrant was issued."

SAWED-OFF RIFLES AND SHOTGUNS

Act 124 of 1975 makes it unlawful under South Carolina State law for anyone to possess sawed-off shotguns and rifles. Penalty for violation is a maximum fine of $10,000, imprisonment for ten years, or both.

UNLAWFUL SHOTGUNS

Shotgun having a barrel(s) less than eighteen inches in length...

OR

Weapon made from a shotgun having an overall length of less than twenty-six inches.

UNLAWFUL RIFLES

Rifle having barrel(s) less than sixteen inches in length...

OR

Weapon made from a rifle with overall length of less than twenty-six inches.

UNKNOWN INFORMER INFORMATION

So much publicity has been given over to the role of the 'reliable' informer, we sometimes forget that the 'tipster' or previously unknown informer has his place in law enforcement. Historically, law informent depends to a degree upon information received from well known informers and previously unknown 'tipsters'.

US v. SMITH

(503 F2d 1037)

In a recent case arising in Arizona, a drug 'user' was apprehended at Nogales, Arizona, in possession of a quantity of heroin. Upon being questioned, the 'user', Zachary, told police that he had obtained the heroin from a male 'pusher' who was described, said to be accompanied by a woman companion, who was also described. Zachary told police that the 'pusher', Smith, and his woman

companion were at the airport in Tuscon then and would board a plane to Chicago at 9:00 p. m. that night.

The 'tipster', Zachary, was previously unknown to police of the area.

Nogales customs authorities radioed the information to Federal agents in Tuscon, who went to the airport and observed two persons meeting the description given by the 'user' Zachary buying airline tickets for a flight to Chicago. They were arrested without warrant and searched. Cocaine and heroin were found in the woman's girdle. Conviction was obtained.

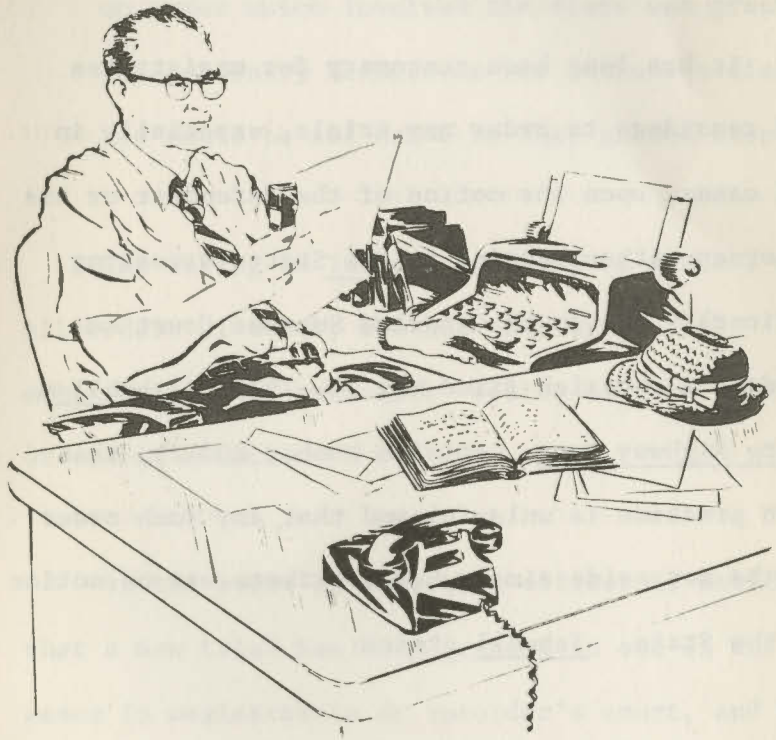
The defendants argued that there was no probable cause to arrest them, because the 'tipster', Zachary was not known by police to be reliable.

COURT RULING: When later events corroborate what an unknown 'tipster' has said, and all the facts known to police point to the probability that a suspect possesses contraband, there is sufficient probable cause upon which to act.

It was further argued that the Federal agents in Tuscon should have obtained a search warrant.

COURT RULING: The suspects were obviously about to board a plane that would take them and any possible evidence out of the jurisdiction. There was no time to obtain a warrant. Search without a warrant in such exigent circumstances was lawful.

FLEMING'S NOTEBOOK!



FLEMING'S NOTEBOOK...Chapter 112:

ORDER OF MAGISTRATE OR

RECORDER GRANTING NEW TRIAL

It has long been customary for magistrates and recorders to order new trials, especially in DUI cases, upon the motion of the defendant or his attorney without notice to the State (arresting officer). The South Carolina Supreme Court has said in a decision filed May 14, 1975, (Ishmell v. State Highway Dept., opinion Number 20012), that such practice is unlawful and that any such order may be set aside simply because there was no notice to the State. Ishmell states:

"...it has been agreed that the order of the magistrate (granting new trial) was procured without notice to the State. We hold in State v. Best, 257 SC 361, 186 SE 2 d 272, that an order which involved the State was granted improvidently because it was without notice and could be set aside on that ground alone."

The ruling in Ishmell applies, of course, to all orders of court, whether they issue from magistrates' and recorders' courts or from circuit or county courts.

In the event an arresting officer is notified that a new trial has been granted in one of his cases in magistrate's or recorder's court, and he had no notice of a hearing on the matter, the officer is thoroughly justified in asking his Department head to consult the city or county attorney with regard to having such order set aside.

When an order is issued by a circuit judge or county judge setting aside a forfeiture or conviction in recorder's court or magistrate's court, the arresting officer should consult his city or county attorney about looking into the matter to see whether or not the State was afforded an opportunity to appear and oppose the defendant on the question of new trial.

30...EFM

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